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Chair: Mr. Tommo Monthe ..... (Cameroon)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Kelapile

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The meeting was called to order at 10.15 a.m.

Agenda item 143: Administration of justice at the United Nations (A/66/7/Add.6, A/66/158, A/66/224 and A/66/275 and Corr.1)

1. **Mr. Terekhov** (Executive Director, Office of Administration of Justice), introducing the report of the Secretary-General on administration of justice at the United Nations (A/66/275 and Corr.1), said that the report was the result of close cooperation between the Office of Administration of Justice and all relevant stakeholders. While the Secretary-General described the accomplishments of the new system of administration of justice during the reporting period, including a marked improvement in efficiency, he also noted with concern that the improved efficiency and productivity had resulted in serious strains on the financial and human resources of the offices and units serving the system. Significant strengthening was therefore needed in a number of key areas in order to ensure that the current pace of work was maintained and that all of the Assembly's mandates for the new system continued to be implemented.

2. Chapter II of the report provided a review of the formal system of justice, while chapter III contained responses to questions from the General Assembly, including on delegation of authority for disciplinary measures, the impact of the new system on staff-management relations, cost-sharing arrangements, training of actors in the system, statistics on cases received and disposed of during the period by the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, and trends and systemic issues. The annexes to the report contained responses to three questions raised by the General Assembly in resolution 65/251, on proposals for staff-funded mechanisms to fund the Office of Staff Legal Assistance, a proposal for recourse mechanisms for non-staff personnel, and detailed information on monetary compensation awarded by the Management Evaluation Unit and the Tribunals, including payments of compensation equal to six months of salary or more.

3. In chapter IV, the Secretary-General raised a number of issues relevant to the General Assembly's review of the statutes of the Tribunals, emphasizing that discussion of those issues was without prejudice to the principle of judicial independence and that it was for the General Assembly to determine what action, if any, should be taken in relation to them. In chapters V and VI, he made recommendations regarding the strengthening of the formal justice system and action to be taken by the General Assembly.

4. The Committee's attention was also drawn to the report of the Internal Justice Council on administration of justice at the United Nations (A/66/158), which had been prepared pursuant to General Assembly resolution 65/251.

5. **Mr. Barkat** (United Nations Ombudsman), introducing the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/66/224), said that mediation and informal resolution had a unique role to play in preventing conflicts and contributing to an organizational culture that placed an emphasis on harmonious and sustainable relationships in the workplace. Much had been achieved and many lessons learned in the three years since the establishment of a strengthened, decentralized and integrated informal justice system for United Nations staff, with an emphasis on conflict prevention, intervention and resolution, though in some areas adjustments were still needed.

6. An important theme of the current session of the General Assembly was preventive mediation. The Organization's goal of maintaining peace and preventing conflict around the world was also reflected in the efforts made by the Office of the United Nations Ombudsman and Mediation Services to support staff and managers in successfully addressing and overcoming daily workplace challenges inside the United Nations. The informal dispute resolution system was a critical part of the Organization's effectiveness, as it helped to keep its operations running smoothly. The introduction of the new system had resulted in greater demand for informal resolution services, which had risen from 787 cases for the United Nations Secretariat in 2008 to 1,206 cases for the Secretariat and 1,764 cases for the integrated Office in 2010. That bore testimony to the value of the informal system for staff and managers. Staff were also making active use of formal complaints mechanisms. While such mechanisms were necessary at times, closer analysis of the root causes of contested managerial practices might lead to better decisions that were contested less frequently.

7. The most significant development in the reporting period had been the improvement in the Office's ability

to reach staff beyond New York Headquarters through its regional offices. Staff at all levels were willing to explore the potential benefit of informal conflict resolution; however, sustained engagement at all levels of the Organization was needed to ensure that they were aware of the services available. The challenge, therefore, was to reach staff who were working away from Headquarters in special political missions or other field locations. During its recent two-week visit to the United Nations Assistance Mission for Iraq (UNAMI), the Office had received 36 cases, many of which it had been able to resolve on the ground. It should be noted that national staff in such missions had little access or exposure to the informal services offered by the Office except when an ombudsman team visited the mission area. However, as regional ombudsmen had no dedicated travel funds, they faced restrictions in responding and being accessible to staff deep in the field. Formal channels had a much more extensive presence in the field, and experience had shown that staff tended to opt for mechanisms that were easy to reach. As a result, many workplace concerns that could be mediated informally ended up in lengthy investigation or litigation processes that might not always address the underlying problems.

8. The Office continued to provide ombudsman and mediation services, including facilitation, team interventions, conflict coaching, shuttle diplomacy and upward feedback, on a wide range of topics to staff and managers at all levels. In 2010, as in previous years, the top three areas of concern had related to employment and career, relationships within a reporting line, and compensation and benefits, with a majority of cases emanating from field operations. Experience showed that a mutually satisfactory solution was found in about 80 per cent of cases. The Office consistently called on staff and managers to bring forward their concerns as early as possible, since the sooner informal resolution was attempted, the greater the likelihood for resolution and the lower the risk of litigation. While the Office's dedicated mediation capacity handled a growing number of referrals from staff, managers and other mechanisms such as the Tribunals, more could still be done. It was hoped that the Organization would place greater emphasis on encouraging a referral system that recognized the informal system as an important step in addressing conflict.

9. Another pillar of the Office's work was identifying root causes of conflict and sharing them with the Organization in order to achieve positive change. While the report described a number of systemic issues that had been brought to the Office's attention during the reporting period, many had already been addressed with the relevant partners and stakeholders. Other issues, such as building a trusting, responsive and inclusive Organization, were more difficult to address as they affected all levels of the system and required collective action and ownership. Where such elements were lacking, misunderstandings and conflicts were likely to ensue. Organizational changes such as the downsizing of missions or the performance appraisal processes that affected all staff were examples of areas where such issues were particularly critical.

10. The implementation of several incentives that had been proposed by the Office to encourage use of the informal system was well under way, pursuant to General Assembly resolution 65/251. For example, the Secretary-General had included informal resolution as an element of his compacts with senior managers. However, other incentives, such as the implementation of a rapid response mechanism and the strengthening of the overall capacity of the Office, required the General Assembly's sustained support. In that connection, the Committee might wish to consider the related requests included in the report in the light of the significant increase in demand for the Office's services, as well as the managerial and administrative challenges it faced in the light of its new and expanded mandate.

11. **Mr. Kelapile** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/66/7/Add.6), said that, while some benefits of the new system of administration of justice were already apparent, the Advisory Committee had concerns about aspects of its implementation and impact to date. Caution was therefore required to ensure that the system functioned in the best interest of the Organization and remained within the parameters set out by the General Assembly. It would be advisable to undertake a comprehensive assessment of the evolution and functioning of the new system as soon as practicable.

12. The Advisory Committee did not recommend approval of three new full-time judges for the United

Nations Dispute Tribunal, since it was unclear what the Tribunal's ongoing caseload and output would be once the system stabilized. However, it recommended that the three ad litem judges should be extended for a further two-year period, bearing in mind that no significant reduction in workload seemed likely in the near future.

13. The Advisory Committee had recommended approval of 6 of the 26 new regular budget posts proposed by the Secretary-General. In addition, it had recommended 13 of the other requested posts as positions to be funded under general temporary assistance. Approval of the requested reclassification of a post in the Registry of the Dispute Tribunal in New York from P-2 to P-3 level was also recommended.

14. Recalling that the General Assembly had decided to revert at its sixty-sixth session to the mandate and functioning of the Office of Staff Legal Assistance, the Advisory Committee stressed that a decision on those issues was important. While it continued to support the provision of legal advice and guidance to staff in the processing of their claims through the formal justice system, it considered that the role of the Office of Staff Legal Assistance should not extend to the representation of staff before the Tribunals. Pending decisions on its mandate and scope of functions, and on a staff-funded mechanism to support its work, the Advisory Committee did not recommend approval of the new posts sought for the Office. Considering that a contribution from staff towards the Office's activities would give them a stake in the process and might discourage unnecessary litigation, it recommended that the Secretary-General should be requested to propose a mandatory scheme for a staff-funded mechanism.

15. The Advisory Committee had no objection to the Secretary-General's proposal for recourse mechanisms for non-staff personnel, which would not entail an expansion of the existing scope of the administration of justice system, nor did it object to the short-term measures proposed to expedite the processing of disciplinary cases from the field. It took note of the issues raised by the Secretary-General for consideration by the General Assembly in its review of the statutes of the Tribunals and saw merit in his recommendations. As the system of administration of justice evolved, adjustments should be made, where necessary, to ensure that it functioned in the best interest of the Organization and in line with its governing principles.

16. With regard to the activities of the Office of the United Nations Ombudsman and Mediation Services, the Advisory Committee continued to believe that the informal process played a key role in resolving disputes and, by extension, in avoiding unnecessary recourse to litigation. Noting that the continued failure to finalize the revised terms of reference for the Ombudsman was delaying agreement on cost-sharing arrangements, it urged the timely completion of that work. It also looked forward to considering the findings of the forthcoming external review of the Office's activities and impact. The Advisory Committee recommended approval of one new post for that Office, since it was of the view that the functions outlined for the two posts proposed could be combined in a single post.

17. **Mr. Di Luca** (Argentina), speaking on behalf of the Group of 77 and China, said that the Group appreciated the progress made by the new system of administration of justice in disposing of the backlog of cases and addressing new ones. The strengthened operational capacities of the Tribunals should enable them to make further progress in dealing with all pending cases. The Group also welcomed the action taken to date to encourage informal dispute resolution.

18. Noting that the success of the new system depended on the allocation of sufficient funds and qualified personnel, the Group emphasized the need to assign adequate resources to support the handling of appeals and disciplinary cases at offices away from Headquarters and in the regional commissions and to assist in litigation matters at the Dispute Tribunal locations in Geneva and Nairobi. The system, which was still evolving, should be carefully monitored in order to ensure its success. Many key areas must also be strengthened. Recalling that there were no permanent courtrooms in Nairobi, Geneva or New York, the Group urged the Secretary-General to facilitate, as a matter of priority, completion of the project to construct a dedicated courtroom, for which resources had been included in the proposed programme budget for the biennium 2012-2013. Furthermore, it was regrettable that a cost-sharing arrangement for the totality of the internal justice system had yet to be finalized. The Group trusted that the Secretary-General would expeditiously conclude an agreement on pending issues in that regard.

19. **Mr. Ballantyne** (New Zealand), speaking also on behalf of Australia and Canada, said that the three delegations welcomed the progress made over the last two years towards a fair, efficient and effective internal justice system, which was essential for strengthening the Organization's accountability, oversight and human resources management. While they would study the Secretary-General's recommendations carefully, they considered that the new system was still evolving and it was therefore too early to make an accurate assessment of its long-term resource requirements.

20. It was imperative that staff should make some form of financial contribution towards the activities of the Office of Staff Legal Assistance. The three delegations therefore strongly endorsed the Advisory Committee's recommendation that the Secretary-General should propose a mandatory staff-funded mechanism.

21. **Mr. Dettling** (Switzerland), speaking also on behalf of Liechtenstein, said that while the progress achieved in the two years since the establishment of the new system of administration of justice was commendable, much remained to be done to achieve the goals that the Member States had set themselves in General Assembly resolution 61/261. It was the Committee's duty to ensure that sufficient resources were made available for the consolidation, development and credibility of the new system. With regard to the expiration of the mandate of the three ad litem judges at the end of 2011, which posed an immediate challenge, it was important to find a solution that guaranteed staff the right to an effective remedy. The two delegations noted with interest the Advisory Committee's recommendations in that regard. Mechanisms that strengthened the efficiency and effectiveness of the new system must also be encouraged. In particular, the adoption of simplified procedures, and the role of the Management Evaluation Unit and the Office of Staff Legal Assistance, were essential. It was regrettable that efforts to establish a staff-funded mechanism for the Office of Staff Legal Assistance had not yet come to fruition. The various parties should be encouraged to find a solution in order to strengthen that body.

22. All individuals working for the United Nations, regardless of their contractual relationship with it, should have access to an independent body handling grievances and providing appropriate remedies. The two delegations believed that the Secretary-General's proposal for an arbitration mechanism should be further developed. Furthermore, access for non-staff personnel to the informal system should be designed in a way that would enable them to bring their cases before the Ombudsman. Those unable to benefit from the proposed arbitration mechanism should also be guaranteed minimum access to the formal system, particularly the Management Evaluation Unit.

23. Lastly, the discussions started in the Sixth Committee on reporting within the new system should be continued. A satisfactory way to provide the General Assembly with an overview of internal justice system activities should be developed. In that connection, direct reporting by the two Tribunals to the General Assembly should be considered as one potential solution that would strengthen the independence of the system.

24. **Mr. Xie** Xiaowu (China) said that the establishment of the internal administration of justice system was an important part of United Nations reform. His delegation appreciated the results achieved to date and trusted that, with the cooperation of staff and management, further improvements would be possible in the future. Observance of the rule of law and due process was an important precondition for the smooth operation of the new system. In both the formal and informal systems, disputes must be settled and cases handled in strict accordance with the relevant norms of international law and appropriate legal procedures. The informal system was an important element of the administration of justice system that had played an important role in settling disputes, reducing the need for formal proceedings and creating a harmonious working environment. It was hoped that the Ombudsman's Office would adopt more flexible, efficient and innovative working methods in order to improve its effectiveness. Lastly, the system should both ensure respect for the rights of staff members and hold them accountable for their actions in order to enhance administrative efficiency.

25. **Mr. Kanamori** (Japan) said his delegation agreed with the Advisory Committee that the new system of administration of justice was still evolving and that many aspects had yet to settle into place. It also agreed with the majority of the Advisory Committee's recommendations concerning resource requirements. In that connection, he said that the financial burden of resolving disputes and processing cases should not be borne solely by Member States; it should be shared by

all the parties concerned, including staff members. In view of the failure of the Staff-Management Coordination Committee to reach an agreement on a staff-funded mechanism to support the work of the Office of Staff Legal Assistance, his delegation agreed with the Advisory Committee that no new posts should be approved for the Office until a decision was taken in that regard.

26. His delegation would seek further information regarding a case in which the Dispute Tribunal, in a ruling that had been subsequently confirmed by the Appeals Tribunal, had found that the Secretary-General might be held legally and financially liable for complying with a General Assembly resolution when implementation of such a resolution would lead to outcomes inconsistent with human rights norms. That ruling might lead to the undermining of the General Assembly's authority, and in particular the Committee's, over administrative and budgetary matters, including human resources management issues. Having that information would enable the Committee to take an informed decision regarding the amendments the Tribunals had adopted to their respective rules of procedure, as set out in the relevant report of the Secretary-General (A/66/86 and Corr.1).

27. **Mr. Lieberman** (United States of America) said that the new system of administration of justice system had already made a positive impact on the transparency, fairness, efficiency and accountability of the United Nations human resources system. Although his delegation was impressed by the professionalism and productivity of the new system, it recognized that the system was still evolving and there were problems that needed to be addressed.

28. All of the recommendations in the reports that were before the Committee deserved careful consideration. His delegation looked forward to receiving the views of the Sixth Committee on the legal aspects of the issues that had been identified by the Secretary-General in relation to the statutes of the Tribunals and their rules of procedure, as well as other matters raised in those reports.

29. Although the Secretary-General's had based his request for additional resources on the expectation that the volume of work would continue to increase at all levels of the system, his delegation was concerned by the underlying analysis that had been presented. In that connection, he recalled that all of the parties concerned had repeatedly expressed the expectation and hope that the new system would encourage greater reliance on informal dispute resolution instead of litigation. In view of the current global financial crisis, it was incumbent on the Secretary-General and Member States to ensure that all requests for resources were fully justified and the Organization used its limited resources in the best manner possible.

30. His delegation welcomed the Secretary-General's proposal concerning a recourse mechanism for non-staff personnel and his proposals for a staff-funded mechanism to support the work of the Office of Staff Legal Assistance. There was much merit in the views of the Advisory Committee with regard to the latter.

Agenda item 134: Proposed programme budget for the biennium 2012-2013 (*continued*)

Revised estimates relating to the proposed programme budget for the biennium 2012-2013 under section 1, Overall policymaking, direction and coordination, and section 37, Staff assessment related to the strengthening of the Office of the Director-General, United Nations Office at Nairobi (A/66/7/Add.7 and A/66/393)

Revised estimates resulting from resolutions and decisions adopted by the Economic and Social Council at its substantive session of 2011 (A/66/7/Add.9 and A/66/510)

Request for a subvention to the United Nations Institute for Disarmament Research resulting from the recommendations of the Board of Trustees of the Institute on the work programme of the Institute for 2012-2013 (A/66/7/Add.8 and A/66/170)

31. **Mr. Huisman** (Director, Programme Planning and Budget Division), introducing the report of the Secretary-General on revised estimates relating to the proposed programme budget for the biennium 2012-2013 under section 1, Overall policymaking, direction and coordination, and section 37, Staff assessment related to the strengthening of the Office of the Director-General, United Nations Office at Nairobi (A/66/393), said that, following the finalization of the proposed programme budget for the forthcoming biennium and the submission of the related budget fascicle, the newly appointed Director-General had joined the United Nations Office at Nairobi and the overall level of requirements of the Office of the

Director-General had been subjected to a thorough review. Owing to the timing of the issuance of the budget fascicles, it had not been possible to incorporate the additional resources identified during the review for the strengthening of the Office of the Director-General in the proposed programme budget for the biennium 2012-2013.

32. The review of the overall resource requirements had indicated that there was a need for some strengthening of the Office of the Director-General. The related essential requirements consisted of the establishment of three new posts, the upward reclassification of an existing post and the allocation of some non-post resources. The revised estimates reflected the additional requirements of the Office of the Director-General under section 1 of the proposed programme budget and amounted to $427,800 net, before recosting.

33. Turning to the Secretary-General's report on revised estimates resulting from resolutions and decisions adopted by the Economic and Social Council at its substantive session of 2011 (A/66/510), he said that additional requirements arising from those resolutions and decisions were estimated at $572,900 under the proposed programme budget for the biennium 2012-2013. Those requirements were expected to be absorbed within the resources provided under the proposed programme budget for the biennium 2012-2013; hence, no additional requirements were sought above and beyond the level of funding of the proposed programme budget. Additional extrabudgetary resources in the amount of $500,000 would be sought in 2012-2013 for the implementation of the activities requested in Council resolution 2011/14. The Secretary-General's recommendations were set out in paragraphs 31 and 32 of the report.

34. Introducing the note by the Secretary-General on the request for a subvention to the United Nations Institute for Disarmament Research (UNIDIR) resulting from the recommendations of the Board of Trustees of the Institute on the work programme of the Institute for 2012-2013 (A/66/170), he said that, in accordance with General Assembly resolution 60/248, the statute of the Institute and the recommendations of its Board of Trustees, the General Assembly was requested to approve a subvention to UNIDIR of $577,800 (before recosting) from the regular budget for the biennium 2012-2013. The related provision had been included under section 4, Disarmament, of the proposed programme budget for the biennium 2012-2013.

35. **Mr. Kelapile** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the Advisory Committee's report on revised estimates relating to the proposed programme budget for the biennium 2012-2013 under sections 1 and 37 (A/66/7/Add.7), said the Advisory Committee regretted that the resources required to support the Office of the Director-General of the United Nations Office at Nairobi could not be presented in a timely manner as part of the Secretary-General's proposed programme budget for the biennium 2012-2013. The General Assembly and the Committee had repeatedly expressed concern regarding a piecemeal approach to budgeting.

36. The Advisory Committee did not recommend the establishment of the P-4 post for a Protocol Officer and the Local level post for a Legal Assistant. It did, however, recommend approval of the Local level post for Administrative Assistant and the reclassification of the post of Chief of Office.

37. Introducing the Advisory Committee's report on revised estimates resulting from resolutions and decisions adopted by the Economic and Social Council at its substantive session of 2011 (A/66/7/Add.9), he said that, since no additional appropriations were being sought over and above the level of funding of the proposed programme budget for the biennium 2012-2013 and adoption by the General Assembly of the resolutions recommended by the Council would not entail any additional requirements for the programme budget for the biennium 2010-2011, the Advisory Committee had no objections to the course of action set out in paragraphs 31 and 32 of the Secretary-General's report (A/66/510).

38. Introducing the Advisory Committee's report on the request for a subvention to UNIDIR (A/66/7/Add.8), he said that the Advisory Committee recommended that the General Assembly should approve the request for a subvention of $577,800 from the regular budget, and noted that the request was consistent with section 4, Disarmament, of the proposed programme budget for the biennium 2012-2013.

39. **Mr. Di Luca** (Argentina), speaking on behalf of the Group of 77 and China, said that the Group was

satisfied with Secretary-General's explanation as to why he had been unable to include the additional resources required for the strengthening of the Office of the Director-General of the United Nations Office at Nairobi in the proposed programme budget for the biennium 2012-2013. The Group strongly supported the strengthening of the United Nations Office at Nairobi and therefore supported the proposal to strengthen the Office of the Director-General.

40. The Group wished to emphasize that all mandates approved by the intergovernmental organs of the United Nations, particularly those related to social and economic development, must receive adequate funding. Accordingly, sufficient resources should be allocated to fund the programmes and activities mandated by the resolutions and decisions the Council had adopted at its substantive session of 2011. The Group also wished to emphasize the role of the Committee for Programme and Coordination, the main subsidiary organ of the General Assembly and the Council for planning, programming and coordination, in reviewing programmatic changes to the programme budget.

41. Lastly, the Group supported approval of the request for a subvention for UNIDIR from the regular budget for the biennium 2012-2013.

The meeting rose at 11.35 a.m.